

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

15CV2225

Mario Voldiviego

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

The City of New YorkSect: Kimberly MarshallEdward Friedman

COMPLAINT

under the

Civil Rights Act, 42 U.S.C. § 1983

(Prisoner Complaint)

Jury Trial: ☒ Yes ☐ No

(check one)

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(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff

Name

Mario Voldiviego

ID #

11578161R

Current Institution

G.M.D.C

Address

15-15 HAZEN STEast Elmhurst, NY 11370

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1

Name

The City of New York

Shield #

Where Currently Employed

Address

Defendant No. 2 Name Kimberly Marshall Shield # 750
 Where Currently Employed NYPD
 Address Brooklyn Special Victims Squad

Defendant No. 3 Name Edward Friedman Shield # _____
 Where Currently Employed _____
 Address 26 Court Street Suite 1903
Brooklyn, NY 11242

Defendant No. 4 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 5 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur?
66 Precinct Brooklyn, NY 11218

B. Where in the institution did the events giving rise to your claim(s) occur?
Storage room

C. What date and approximate time did the events giving rise to your claim(s) occur?
Feb 28, 2013 at around 11:15 PM

Statements of Facts!

on the day of Feb 28, 2013 I was arrested at the 66 precinct for a misdemeanor, which was dismissed months later.

I was detain at the precinct 66, since 5:45 pm, awaiting into they could charge me with another case. At around 11:15 pm, I was interview by Det Kimberly Marshall, shield # 750 and P.O Cruz, but didnt have the interpreter I had have requested earlier, since my english is not too good, Violating my New York constitution Article 1 "Bill of Rights" Section 11 (Equal Protection of laws, discrimination in civil rights prohibited): No person shall be denied the equal protection of the laws of this state or any subdivision thereof: No person shall, because of race, color, Creed or religion, be subjected to any discrimination in his Civil rights by any other person or by any agency or subdivision of the state. However I did spoke to Det Marshall with some difficulties, but I was Never read, reminded, show, or offered by them my Miranda rights, beverages, food or bathroom break, Neither decline the offer like they falsely stated, since I was there from 5:45 pm after a long day from work. Violating Not only my New York Constitution Article 1 Section 11, but also my 14th amendment from my U.S Constitution.

in my interview with det Marshall, she suggested to give her a statement for the Judge, so I could go home, Not knowing of my rights, being my first time arrested and trying to be cooperative and Not knowing the reason I was been arrested, I wrote a statement, there's a verbal statement as well, were I mention knowing Ms Morrero two years ago, having sex with her 4 to 5 times and her been 17 at the time, but according to Det Marshall

notes I had say 16 and not 17 years old. (Exhibit 4)

Verbal statement not signed by me or writing by me.

According to statement by Det Marshall there's a DVD and a Hard drive found hidden together in the back of a closet bedroom (Exhibit 1) but on a statement signed by Ms Hernandez (Ms Marrero's cousin) where she state she found on 2/27/13 inside a Bookbag, the DVD (sex video) There's no mention of any Hard drive been found inside a Bookbag, hidden in the back of any closet bedroom. (Exhibit 2) "There were No closet at all."

Hard drive the I have requested to see it since I have no recollection of any hard drive being in any bookbag. However I do have a Hard drive in my livingroom placed together with my DJ equipment which I use to store all my music, item the it sure had have never been seizure with out a warrant Violating my IV Amendment: The right of the people to be secure in their houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and NO Warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Based on Mr Marshall Opinion and Not Facts, the hard drive contains evidence related to the crime I being falsely accuse (Exhibit 3) which the report come back Negative, no videos or images matching the requested criteria.

On March 6, 2013 the date of my indictment, the City of New York Violate my 1st, 5th and 14th amendments of my U.S. Constitution by depriving my right to a Grand Jury, denied the liberty

of speech or of the press to defend my self.

Due to the Ineffective Assistance of Counsel, on July 16, 2013 I have put a motion for Bail reduction, which was denied to the oppose of the A.D.A., mentioning the I was a Flight Risk, I mention my Counsel at the time, Mrs ZISA SALVATORE, the I am a legal resident the I have family and a daughter to support, and if I want it to leave the country I would had have took the effort to plea guilty to a Non Violent Crime and have sign my deportation like they were offer me. to what my counsel just keep quiet Violating my 8th and 14th Amendment of my U.S. Constitution.

(EXHIBITS) I also sent 2 Motions on January 19, 2014 (30.30 /

(EXHIBIT 6) Defective indictment for Multiplicitus and duplicatus Counts) which it was never mentioned, answer, or even denied. I question Ms Salvatore many times about my motions, but never got an answer till Dec 8, 2014 before I got appointed to a new Counsel, to what she reply "Motions made by inmates are never take into consideration" So why is the reason the City of New York have D.C.C placing motions available to detainees?

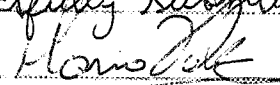
The Court not acknowledge my 2 motions from January 2014 and the Ineffective Assistance of Counsel is a violation of my 4th amendment (the right to petition the government to correct injustices) 5th amendment (right not to be put in double jeopardy) due to my duplicatus and Multiplicitus counts. 6th amendment (right to speedy trial) 14th amendment (Deny to any person the equal protection of the law) and my New York state Constitution, Article 1, section 6 (the right to effective Counsel)

on the same day Dec 8, 2014 my new counsel Mr Edward Friedman introduced him self and I was told he would contact me before the court date, which never happen, and on January 23, 2015 I actually got to talk to Mr Friedman for the first time, and I was told by him unprofessionally to just cop out, with out even want to heard my side of events or analyzing the whole case, to just take a plea and not go to a trial the is lost, But if I did want to go to trial, he wouldnt mind get the 70\$ dollars an hour. it was clearly he didnt met the standards of section 3.1 (a) of the American Bar Association, and his ability to represent me properly. I understand the counsel have the right to advise the client, but I would think the for a better defense or advise, the counsel have the obligation to heard the client side of events. On Dec 12, 2014 I put a motion for reassignment of counsel, and on the day of court January 23, 2015 I was told by the judge the this is not a restaurant the I could have what I want, and I was asked what was the reason I Cant communicate with Mr Friedman, making it an issue of lack of english on my part, disregarding or mentioning the real reason explaining in my motion or let me know if my motion was denied. Now I am stuck by the Court with a counsel who have no communication with me, who have no faith on me, the till this date March 12, 2015 had have only 1 Video Conference who refuses to heard my side of events or take notes in anything I have to say, investigate, or bring the witnesses I have asked for my defences. Violating my 6th and 14th amendment of my U.S. Constitution and my New York Constitution Article 1 Section 6

(EXHIBIT 7)

But more importantly, bringing me to a trial the I have no idea of how he is going to go about, trial the he knows his not going to represent me properly or Fair.

Based on the above and the continue Violations of my Constitutional rights, The unfair coming up trial, jeopardizing my life and freedom, and denial the equal protection of the laws. I respectfully request that the Court take any action it may deem appropriate and proper to defendants Marshall and Friedman for improper use of authority, wrongful acts, ineffective assistance of Counsel and Violation of my Constitutional rights. I also request monetary compensation of (\$3) three million dollars for the city of New York and members of the law and justice department of New York Violated my 1st, 4th, 5th, 6th, 8th and 14th amendments of my Constitutional rights and for the Court to disregard My Mental state of Mind, but the most important reason the I bring this complaint under the Civil rights act, 42 U.S.C § 1983 is not to argue about my criminal charge case, but to have my rights Protected under the U.S. Constitution, so I could have an effective Counsel and a Fair trial.

Respectfully submitted

 Mario Valdivia

March 12, 2015

when and how, and their response, if any: _____

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies. _____

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. **Relief:**

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). I respectfully request the court to

protect my rights, take any action appropriate and proper to
the defendants Marshall and Friedman and for the violation of
my rights, suffering and mental illness the city is making me
go through I request monetary compensation of (3) three million
dollars.

VI. **Previous lawsuits:**

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes _____ No ✓

On
these
claims

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 12 day of March, 2015

Signature of Plaintiff

Inmate Number

Institution Address

[Signature]
11578161 R
15-15 Hazen St
East Elmhurst, NY 11370

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 12 day of March, 2015 I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

[Signature]

8. On March 5, 2013, I watched the video recordings on the aforementioned DVD with Skylee Marrero. Skylee Marrero identified herself and Mario Valdiviezo on each recording and identified the location during each video as the Defendant's bedroom at 6408 New Utrecht Avenue in Kings County.

9. On February 28, 2013, I arrested Mario Valdiviezo for the rape of Skylee Marrero.

10. I am informed by Assistant District Attorney Olatokunbo Olaniyan of the Kings County District Attorney's office that the Defendant was subsequently indicted by a Kings County Grand Jury for Use of a Child in a Sexual Performance, Possessing a Sexual Performance by a Child, Rape in the Second Degree, Endangering the Welfare of a Child, and other related charges.

11. The aforementioned gray hard drive with serial number E101559 is currently within the possession of the New York City Police Department under property clerk invoice number 3000189256.

12. Based on the above, and my training and experience, it is my opinion that the hard drive contains evidence related to the crimes of Use of a Child in a Sexual Performance, Possessing a Sexual Performance by a Child, Rape in the Second Degree, Endangering the Welfare of a Child, and the other related charges for which the Defendant stands indicted.

Exhibit 3

I request that any examination by this Court and the sworn and stenographically transcribed minutes thereof be incorporated by reference into and made a part of this application.

I further request that the minutes of any examination conducted by this Court be sealed except for one copy, which will be maintained by the Sex Crimes Bureau of the Kings County District Attorney's Office until needed for the prosecution resulting from the execution of this warrant.

Exhibit 1
Recovered from a
Bed Room closet?

WHEREFORE, I respectfully request that the Court issue a warrant and order for seizure, in the form annexed, authorizing a search and forensic examination of the gray external hard drive serial number E101559 recovered from a bedroom closet in 6408 New Utrecht Avenue in Kings County. I further request that any property seized from the forensic examination and search be stored at the offices of the New York City Police Department and that a written inventory be brought before this Court.

I further respectfully request that the Court take any additional action it may deem appropriate and proper.

False Statements Made in this Document Are Punishable as a Class A Misdemeanor Pursuant to Section 210.45 of the Penal Law.

Det. K. Marshall #750
Detective Kimberly Marshall, Shield #750

Sworn to before me this
4th day of October, 2013

JSC
HON. NEIL JON FIRETOG

Page 2 of the NYS Domestic Incident Report:
STATEMENT OF ALLEGATIONS / SUPPORTING DEPOSITION

Suspect Name (Last, First, M.I.)

VALDIVIEZO, MARIO

I, Dalia (victim/deponent name), state that on 2/24/13, (date) at 10:00 PM
 Yo, (nombre de víctima/deponente), declaro que en tal fecha 2/24/13 en

(location of incident), in the County/City/Town/Village of _____, of the state of New York, the following did occur:
 (donde el incidente ocurrió), el condado/ciudad/aldea/pueblo de _____, del estado de Nueva York, lo siguiente ocurrió:

I had a argument with Mario Valdiviezo in the month of November about a video on his laptop of sex. The video disappear. In the month of 2/25/13 at around 10:pm mario come home from work and we argued about how abt and the video was Brought up of him and my lil cousin making sex video. I started to pack my stuff when all Mario clothes fall's down and a gun is on the floor. Mario picked it up and was saying if I keep on with the video shit that he should use it on me. I got scared. And the nite of 2/27/13 I found in Mario Backpack the sex video of Mario and Sky. he put the gun under the Bed.

*EXhibit 2

(Use additional pages as needed)

False Statements made herein are punishable as a Class A Misdemeanor, pursuant to section 210.45 of the Penal Law.
 Declaraciones falsas hechas aquí son castigables como una clase de delito menor, de acuerdo con la seccion 210.45 de la ley penal.

Victim/Deponent Signature
 Firma de víctima/deponente

2/28/13
 Date
 Fecha

Note:
 Whether or not this form is signed, this DIR form will be filed with law enforcement.

Interpreter

Date

Nota:
 Si esta forma esta firmada, o no, esta DIR forma sera registrada con la policia.

Witness or Officer

Date

Page

of

EXHIBIT 4

10408 New

Wright 2R.

Valdiviezo, Mario.

913176.

(917) 676-0272.

110910. Sasha Valdiviezo.

2318.

Yrs had sex.

2 years ago.

48. x time.

16.

yes. video

EXHIBIT 5

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Kings 1420

THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT,

-AGAINST-

Mario Valdivia
DEFENDEANT

NOTICE OF MOTION
TO DISMISS
INDICTMENT FOR
DENIAL OF RIGHT
TO SPEEDY TRIAL
PURSUANT TO
CPL § 30.20/30.30

Docket No. 201301016260
Indict. No. 01936/2013
NYSID No. 1157861R

PLEASE TAKE NOTICE, that upon the annexed affidavit of Mario Valdivia, duly affirmed the 17th day of January, 2014, and upon the indictment and all the proceedings had herein, the undersigned will move this Court Kings County Supreme thereof, to be held at the courthouse located at 320 Jay Street, county of Kings, on the 24th day of January, 2014, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the indictment herein, upon the ground that the defendant has been denied his right to a speedy trial as guaranteed by the Sixth Amendment of the United States Constitution and pursuant to sections 30.20 and 30.30 of the New York State Criminal Procedure Law, and any further relief as the court may deem just and proper.

Yours, etc...

[Signature]
DEFENDANT

141-13-02680

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT,

-AGAINST-

Mario Valdivieso

DEFENDANT.

AFFIDAVIT IN SUPPORT
OF MOTION TO DISMISS
INDICTMENT FOR
DENIAL OF RIGHT
TO SPEEDY TRIAL
PURSUANT TO
CPL § 30.20/30.30

Docket No.

Indict. No.

NYSID No.

201304016260
01936/2013
115718161K

STATE OF NEW YORK)
COUNTY OF Brooklyn) ss:

I, Mario Valdivieso, being duly sworn, deposes and says:

I am the defendant in the above-entitled action, and is personally familiar with the facts and circumstances herein stated.

On the 28th day of February, 2013, a complaint was filed in the Criminal Court of KINGS County, charging the said defendant with the offense(s) of Rape 2nd in violation of New York State Penal Law, section(s) 130.30.

Arraignment of the defendant on the above-mentioned complaint took place in this Court on the 1st day of MARCH, 2013, and defendant was held for Grand Jury proceedings. Subsequently, defendant was indicted for the aforementioned charges and was arraigned upon said indictment in Supreme Court, KINGS County, on the 6th day of MARCH, 2013. plea of guilty has been entered by said defendant and nor has a trial been commenced on the aforementioned charge(s).

STATEMENT OF FACTS

The District Attorney's office has failed to produce the evidence against the defendant. They have violated constitutional mandates under Brady/Kerrigan. The District Attorney's office has requested adjournments because they are unable to produce the evidence against the defendant within the constraints of the 6th amendment as well as the fourteenth amendment and the Criminal Procedure Law.

ARGUMENT

Once an accusatory instrument is filed against a defendant, the criminal action and the statutory time limitations involved in the action, are in effect.

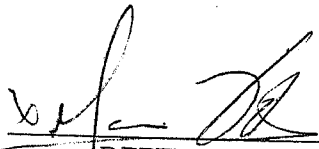
C.P.L. 30.30(1)(a) mandates that the people be ready for the trial of a felony within six months, in this case 311 days, from commencement of the criminal action. Failure to be ready within six months will result in dismissal of the indictment unless the prosecution can show that certain time periods should be excluded.

“Ready for trial” comprises two elements, (i) “either a statement of readiness by the prosecutor in open court, transcribed by a stenographer, or recorded by the clerk, or a written notice of readiness sent by the prosecutor to both defense counsel and the appropriate court clerk” and (ii) the people must in fact be ready to proceed at the time they declare readiness. Delays caused by pre-readiness court congestion do not excuse the People from timely declaring their readiness for trial.

Thus, in the absence of a statement of readiness to proceed, any delay due to court congestion is entirely chargeable to the people. This delay, for which the said defendant is not responsible, has resulted in a denial of the said defendant’s right to a speedy trial, as guaranteed by sections 30.20 and 30.30 of the New York State Criminal Procedure Law and the Sixth Amendment of the United States Constitution as made applicable to the States by the Due Process Clause of the Fourteenth Amendment.

WHEREFORE, this petitioner respectfully prays that an order be issued granting this motion pursuant to the aforesaid sections of the New York State Criminal Procedure Law, and taking into consideration the facts and argument annexed herein, or, in the alternative, an order be issued granting partial relief, or whatever relief the Court sees and deems fit and appropriate to insure the swift and proper administration of justice.

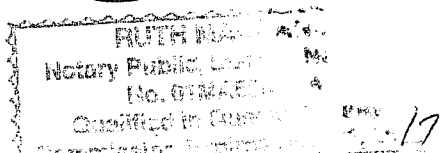
Yours, etc...


DEFENDANT

Sworn to before me this

17 day of January, 20 14.


NOTARY PUBLIC / COMMISSIONER OF DEEDS



AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF Bronx) ss:

I, MARIO V. BIVIERZO, being duly sworn deposes and says:

That I have on the 17th day of January, 2014, placed and submitted the original and copies of this motion to be duly mailed via the United States Postal Service, through the institutional mail room of the GCRC Correctional Facility. Said moving papers were mailed to the following concerned parties:

District Attorney
K. F. J. J. County
350 Jay St.
Brooklyn, NY 11201

Supreme Court
K. F. J. J. County
350 Jay Street
Brooklyn, NY 11201

Lisa Salazar, Defense Counsel

Yours, etc.,

X. M. Bivierzo
DEFENDANT

Sworn to before me this

17th day of May, 2014

[Signature]
NOTARY PUBLIC / COMMISSIONER OF DEEDS

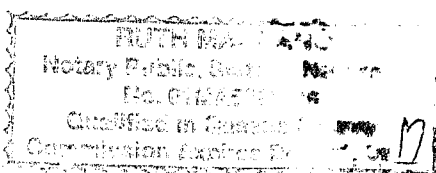


Exhibit 6

SUPREME COURT STATE OF NEW YORK
COUNTY OF King's PART 20

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Mona Valdivia
Defendant

NOTICE OF MOTION

CPL §210.20/210.25

Ind#: 01936/2013

PLEASE TAKE NOTICE that upon the annexed duly verified affidavit of Mona Valdivia and

upon the indictment filed against the above named defendant in this Court on the

March 6, 2013, and upon the arraignment had herein, the undersigned will move this

Court at a part 20 thereof, to be held at the Courthouse located at

300 Jay Street on the April 8, 2014 at 9:30 o'clock in the forenoon

or as soon thereafter as counsel can be heard for an order dismissing the indictment or a count

thereof pursuant to section 210.20 of the Criminal Procedure Law upon the ground that the

indictment was found at a defective grand jury proceeding within the meaning of §210.25 of

the Criminal Procedure Law, and upon the further ground that that the indictment is defective within the meaning of CPL §200.50 and §210.35 of the Criminal Procedure Law and

for such other and further relief that this Court may deem just and proper.

Date: January 18, 2014

Respectfully,

[Signature]

SUPREME COURT STATE OF NEW YORK

COUNTY OF Kings PART 20

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Mario Voldurino

Defendant

AFFIDAVIT IN SUPPORT OF MOTION

CPL §210.20/210.25

Ind#: 01936/2013

State of New York)

County of Kings ss.:

Mario Voldurino, being duly sworn deposes and says that I am the defendant in the above entitled action and am personally familiar with the facts herein stated.

The said defendant was indicted by the Grand jury of the County of Kings on the 6th day of March, 20 13, charged with the crime of Rape 2nd in violation of § 130.70 of the Penal Law, a copy of said indictment is annexed hereto marked exhibit 1. Arraignment of the defendant upon the indictment took place in this Court on the 6th day of March, 20 14, to this date no plea of guilty has been entered by said defendant nor has a trial been commenced as to the aforementioned charge.

This application is made upon the ground that the indictment or a count of the indictment was found at a defective Grand Jury proceeding within the meaning of §210.25 of the Criminal Procedure Law in that the statute defining the offense charged in the indictment is

In addition, the counts in the defendant's indictment were duplicitous. The defendant argues that there is no possible way the Grand Jury could understand the instructions because of the duplicity and more specifically multiplicity of the defendant's indictment. CPL § 200.30.

unconstitutional and invalid because

The defendant was not accorded
an opportunity to testify before the grand
jury. Defendant's 6th amendment right to effective counsel

was violated because defendant informed his attorney that
he wanted to testify and his attorney did not allow him to.

People v. Corona, Also, the indictment did not
conform to the requirements of CPL § 200.50.

No previous application for the relief sought herein has been made.

WHEREFORE, your deponent prays for an order dismissing the indictment and any further relief
that this court may deem just and proper.

Sworn to before me this

1st

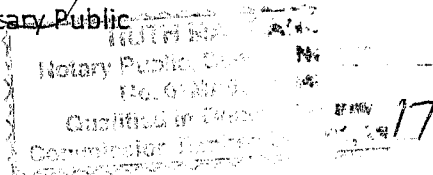
Day of

January 20 14

Respectfully,

[Signature]

Notary Public



AFFIDAVIT OF SERVICE

STATE OF NEW YORK }
COUNTY OF Ramsey } S.S.

I, Mario Valdivia, being duly sworn deposes and says:

That I have on the 18th day of January, 2014, placed and submitted the original and copies of this motion to be duly mailed via the United States Postal Service, through the institutional mailroom of the Cenue Correctional Facility. Said moving papers were mailed to the following concerned parties:

District Attorney
Kenny County
350 Gray Street
Brockton, MA 01920

Supreme Court
Kenny County
350 Gray Street
Brockton, MA 01920

_____, Defense Counsel

Respectfully submitted,

[Signature]
Defendant

14113 02680

Sworn to before me

This 18th day of January, 2014

[Signature]
NOTARY PUBLIC/COMMISSIONER OF DEEDS

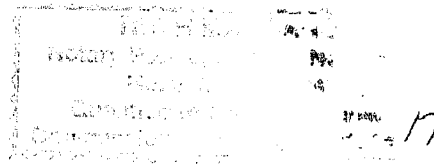


Exhibit 7

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____ : CRIMINAL TERM PART

NOTICE OF MOTION FOR
REASSIGNMENT OF COUNSEL
COUNTY LAW § 722 - C

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

Indictment No. 01936/2013

Mario Voldinez

S.I.R.S.

PLEASE TAKE NOTICE that upon the annexed affidavit of Mario Voldinez and upon all the proceedings heretofore had herein the above named defendant being duly sworn to this ___ day of December, 2014 will move this Court at a Term, Part 50 thereof to be held at the Courthouse located at 320 Jay street, Brooklyn, New York, on the ___ day of January 23, 2015 at 9:30 A.M. of that day or soon thereafter as defendant can be heard for an order pursuant to Article 18 - B and section 772 - C of the County Law; requesting that the Court authorize the services Nunc Pro Tunc of the reassigning of counsel and the assigning of a private investigator for the defendant to prepare his defense herein, and for such other and further relief as to this Court deems just and proper.

Respectfully Submitted,

To: Hon. _____, Esq.,
District Attorney
County of _____

✓ Defendant [Signature]
15 - 15 Hazen Street
East Elmhurst, NY 11370

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____ : CRIMINAL TERM PART

AFFIDAVIT IN SUPPORT

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment No. 01936/2013

- against -

Mano Voldvige, Defendant.

STATE OF NEW YORK)
COUNTY OF _____)ss.

I, Mano Voldvige, being duly sworn, deposes and says:

1. That I am a detainee presently being incarcerated at George Motchan Detention Center, Rikers Island, listed under the mailing address of 15-15 Hazen Street, East Elmhurst, New York 11370.
2. Whereupon, although I am personally familiar with all of the facts and statements hereinafter stated to the best of my knowledge, information and belief; I am a layperson in matters of the law and seek this Court's indulgence for errors, omissions, defects and irregularities pursuant to Civil Practice Law and Rules sections 2001 and 2101(F) thereof.
3. I am the defendant in the above entitled action and make this Affidavit in Support of a Motion to Reassign Counsel, ordering such services Nunc Pro Tunc and assign a private investigator pursuant to County Law section 722 - C and Article 18 - B thereof.
4. I am being charged with the offense(s) of Rape 2nd degree

In violation of section(s) 130.30 of the Penal Law.

5. I know that I am being charged with a serious crime and even though I am presumed innocent and need say nothing at my trial, in reality I must have a competent, caring, effective and energetic counsel in the preparation of my defense.
6. This case has been pending for over three months and my present attorney of record, M Edward Friedman Esq., besides trying to get to "cop a plea" has failed to:
 - A. visit me at my place of confinement;
 - B. inform me of any pertinent motion made, including Bill of Particulars, Omnibus, Suppression, etc., filed on my behalf;
 - C. conduct an investigation in the matter of this action on my behalf;
 - D. make any bail requests or reduction applications on my behalf, just to name a few.

Whereupon, I feel that my attorney of record has failed to comply with attorney's ethical obligation of defense counsel to client.

7. Taking into consideration that my attorney of record M Edward Friedman Esq., has a busy practice, my first and only concern is that I am facing long prison time because I lack proper representation and trial to counsel would be meaningless if it did not require effective assistance and substantial aid. See, Powell v. Alabama, 1932, 287 U.S. 45.
8. Hereto, counsel must confer with his client without undue delay and as often as necessary to advise him or her of his rights and to elicit matters of defense or to ascertain that potential defenses are unavailable. Counsel must conduct appropriate investigations, both factual and legal to determine if matters of defense can be developed and to allow himself enough time for reflection and preparation for trial. Coles v. Peyton, 1968, 389 F. 2D 224.
9. While it is the responsibility of an attorney to provide the client with his or her best advice, that attorney must ultimately not only consult, but taken into account the needs and desires of his client. People v. Renaud, 535 N.Y.S. 2D 985.

10. The denial of opportunity for appointed counsel to confer and consult with the accused and to prepare his defense could convert the appoint of counsel into sham and nothing more than a formal compliance with the Constitutional requirement that an accused be given assistance of counsel. Avery v. Alabama, 1940, 308 U.S. 444.
11. The standard endorsed by the American Bar Association Project on Criminal Justice are in part:

Section 3.1 (a) A lawyer must establish a relationship of trust with his client;

Section 3.8 the lawyer has a duty to keep his client informed of the developments in the case and the progress of preparing the defense;

Section 3.8 (c) the interview should be carried out in private and the lawyer protest against barriers to the development of a reasonable lawyer client relationship.

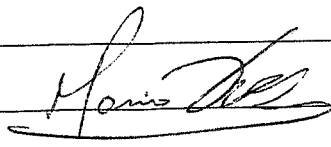
Section 6.1 (b) The commentary in this Section notes that the lawyer's duty is to determine from the knowledge of all the facts whether the client is guilty in law, now in some moral sense, and the lawyer must employ ingenuity to locate witnesses.

12. Further, the right to counsel is guaranteed by the Federal and State Constitutions (U.S. Constitution, Art. I Section 6). The enforcement of this right, however, "calls for more than merely Pro Forma appointment of or service by a member of the Bar. The legal assistance provided must be effective. To insure that it is, trial Judges have a continuing legal duty, duty not to be lightly eschewed, to see to it that the proceedings are conducted with solicitude for the essential rights of the accused. They should carefully evaluate serious complaints about counsel". People v. Median, 44 N.Y.S. 2d 588, 375 N.E. 2d 768; People v. Corona, 1991, 567 N.Y.S. 2d 353.

STATEMENT OF FACTS

on Dec. 8, 2014 My attorney of record Edward Friedman who with a month of notice to get my paper work, not only did he not Video Conference me before the court date, which he say he would do, but also come at me with a Nasty attitude and an unprofessional approach, Not wanting to hear my side of events, stopping me while he was writing few notes, to tell me the my life was Complicated, and went on saying; you did what you did, you enjoy your self now pay the Consequences!, and the I should take the Plea!! it was clearly the he didnt met the standards of Section 3.1(a) of the American Bar Association, and his ability to represent me properly. With out even analyzing the whole Case he mention to just take the plea and not go to trial, but if I did want to go to trial, he wouldnt mind get the 70\$ an hour. I feel scare and lost all confidence of being represented properly by a Disinterested lawyer who from started would Violated my rights.

I respectfully request the Court to be Assignment by a Counsel of Spanish speaking so I dont have to deal with a translated or I rather to be ~~assign~~ have assign Counsel LEAH McMillen who I heard is a fair and professional Counsel, some one who could heard me out, analyze, investigate, and could bring all witnesses so I could have a fair trial.


Trully yours 

13. Comparing the level of representation now provided by M Edmond Friedman, Esq., with the American Bar Association's standards, it becomes self evident that said representation does not measure up to the constitutionality required level.

14. No previous application for the relief sought herein has been made in this or any other Court.

WHEREFORE, M Edmond Friedman, Esq., should be ordered relieved and substituted through assignment of another attorney and private investigator assigned thereto; and for such other and further relief as this Court seems just and proper as to defendant's request herein.

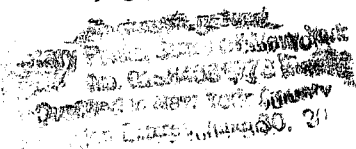
Respectfully Submitted,

Defendant 
15 - 15 Hazen Street
East Elmhurst, NY 11370

Sworn to and subscribed to before me
This 12th day of December, 2014



NOTARY PUBLIC



NOTARY PUBLIC
JAMES J. HARRIS
JANUARY 1, 2015 - DECEMBER 31, 2016
JAMES J. HARRIS
JANUARY 1, 2015 - DECEMBER 31, 2016

STATE OF NEW YORK)

COUNTY OF Bronx) SS:

Name of Document(s)

I, Monie Volbrey, being duly sworn, deposes and says:That I have on the 12 day of December 2014

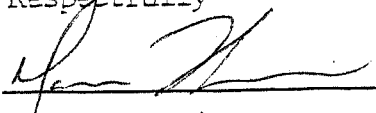
place and submitted the within _____ copies of moving paper(s), to be duly
 mailed via the United States Postal Service, through the institutional mailroom
 at the _____ located at Hazen St., East Elmhurst, New
 York. 11370, to the following concerned parties.

Supreme Court
320 Jay Street
Brooklyn, NY 11201

District Attorney
350 Jay Street
Brooklyn, NY 11201

Edward Friedman Defense Counsel
26 Court Street suite 1903
Brooklyn, NY 11242

Respectfully



Sworn to before me this

12 day of December 2014

Notary Public, State of New York
No. 0154689776
Qualified in New York County
Commission Expires June 30, 15

Mario Voldinego

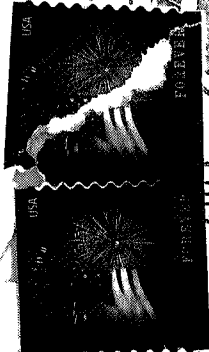
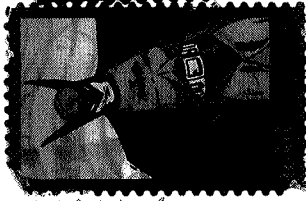
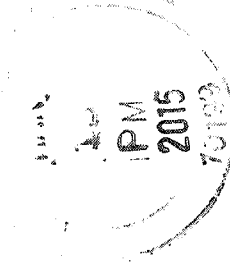
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G.M.D.C

15-15 Haven St

East Elmhurst, NY 11370

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United States District Court
Southern District of New York
Patrick Moynihan United States Courthouse
500 Pearl Street, Room 230
New York, NY 10007